creditor, but under the contract. However, the mere fact that there is a contract right to a transfer will not prevent it from being a preference. *National City Bank* v. *Hotchkiss*, 231 U. S. 50. It has been held that a transfer of goods within the four-month period, according to a prior agreement, as payment for money that had been advanced to be used in their production is not a preference. *Hurley* v. *Atchison, etc. Railroad Co.*, 213 U. S. 126; *Sieg* v. *Greene*, 225 Fed. 955. *Cf. In re Klingaman*, 101 Fed. 691. But in the principal case no part of the equipment was obtained with the money advanced by the company. The decision, nevertheless, may be justified by considering the contract as one to cut timber or, upon default, to convey the property. A default having been committed, there remains the promise to convey the mill and its equipment. This promise, although it relates partly to personalty, is specifically enforceable, for it also involves land and is indivisible. *Leach* v. *Fobes*, 77 Mass. 506; *Fowler* v. *Sands*, 73 Vt. 236. There arises then an equitable ownership in the equipment which strips the transfer of its preferential character.

BILLS AND NOTES — PURCHASERS FOR VALUE WITHOUT NOTICE — BURDEN OF PROOF IN SUIT FOR CANCELLATION. — In a suit by the maker for the cancellation of a negotiable instrument shown to have been secured by fraud of the payee, the question arose as to who had the burden of proving the defendant holder a holder in due course. Section 59 of the Negotiable Instruments Law provides that "Every holder is deemed *primâ facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course." *Held*, that the burden is on the defendants. *Lundean* v. *Hamilton*, 169 N. W. 208 (Ia.).

In a bill in equity for cancellation of an instrument for fraud, failure to allege that defendant is not a purchaser for value without notice is a demurrable defect. *Molony* v. *Rourke*, 100 Mass. 190. And what a party must plead he has the burden of establishing. LANGDELL, EQUITY PLEADING, 2 ed., § 185. The rules in equity should also apply to equitable defenses at law. Logically, therefore, in an action at law on a negotiable instrument by a subsequent holder, a maker setting up the defense of fraud should have the burden of establishing that plaintiff took with notice. But the rule developed that this burden be transferred to the plaintiff when fraud is shown. Its origin may have been in the principle of a discovery, the facts being peculiarly within the holder's knowledge. *Cf. Lord Portarlington* v. *Soulby*, 6 Sim. 356. In view of the pleadings the only burden shifted to the holder should be that of going forward with the evidence. Such burden, however, the courts confused with that of establishing the facts by a preponderance of evidence, owing to the dual aspect of the ambiguous term "burden of proof." See Abbott, "Two Burdens of Proof," 6 HARV. L. REV. 125; 4 WIGMORE, EVIDENCE, §§ 2483–2489. Thus the rule became established that this ultimate burden should be saddled upon the holder. *Harvey* v. *Towers*, 6 Ex. 656; *Atlas National Bank* v. *Holm*, 71 Fed. 489. The same interpretation is made under the Negotiable Instruments Law. *Parsons* v. *Utica Cement Co.*, 82 Conn. 333, 73 Atl. 785; *Leavitt* v. *Thurston*, 38 Utah 351, 113 Pac. 77. Being settled at law this construction should be followed in equity, although the result conflicts with the pleadings. *Regester's Sons Co.* v. *Reed*, 185 Mass. 226, 70 N. E. 53; *Mills* v. *Keep*, 197 Fed. 360.

CONFLICT OF LAWS — TRUSTS *INTER VIVOS* — WHAT LAW GOVERNS. — Two settlors, of New York and New Jersey respectively, contributed an equal amount to a fund of which they declared themselves trustees by instrument